BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	Visteon Corporation Tangible Personal Property Account No. 087961 Tax years 2002, 2003	)))	Davidson County

INITIAL DECISION AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Statement of the Case

These are direct appeals pursuant to Tenn. Code Ann. section 67-1-1005(b) from the following back assessments/reassessments of the subject property:

Tax Year	Original Assessment	Revised Assessment	Back Assessment/ Reassessment
2002	$3,272,902	$28,154,589	$24,881,689
2003	$2,639,827	$24,492,676	$21,852,849

The appeals were received by the State Board of Equalization ("State Board") on December 5, 2005. On February 12, 2007, the attorneys for the appellant Visteon Corporation ("Visteon") filed a motion for summary judgment. Metropolitan Attorney Margaret O. Darby filed a response to this motion on March 23, 2007; and the taxpayer's attorneys filed their reply one week later.

The undersigned administrative judge heard oral argument on the motion for summary judgment on April 11, 2007 in Nashville. Visteon was represented by David C. Scruggs, Esq., of Evans & Petree, PC (Memphis). Ms. Darby appeared on behalf of the Davidson County Assessor of Property ("Assessor").

Findings of Fact and Conclusions of Law

Background. Except in the event of fraud, fraudulent misrepresentation, collusion, or failure to file the required reporting schedule, the deadline for initiating a back assessment or reassessment of property under Tenn. Code Ann. sections 67-1-1001 *et seq.* has long been September 1 of the year following the year in which the original assessment was made.[1] Tenn. Code Ann. section 67-1-1005(a). Particularly in more industrialized counties, this statutory deadline left assessors "a relatively brief period of time within which to discover unreported or underassessed personal property by audit or otherwise." Lemm Services, Inc. (Shelby County, Tax Year 1996, Initial Decision and Order, May 7, 1999), p. 4. In recognition of this problem,

[1]The statutory deadline is extended by two years in the specified exceptions. *See* Tenn. Code Ann. section 67-1-1005(a).

during its 2000 session, the General Assembly amended Tenn. Code Ann. section 67-1-1005 by adding the following new subsection:

> (d) Notwithstanding the deadline in this section for initiating a back assessment or reassessment, the issuance of a notice of tangible personal property audit by the assessor tolls the running of the deadline during the period of the audit **from the issuance of the notice until issuance of the audit findings**. [Emphasis added.]

Ironically, although this amendment was manifestly intended for the benefit of assessors (and taxing jurisdictions), they have since wound up on the losing end of several appeals where back assessments/reassessments of audited accounts were made belatedly. *See*, e.g., Sharp Manufacturing Company of America (Shelby County, Tax Year 2000, Initial Decision and Order, November 1, 2005); Pittco, Inc. (Shelby County, Tax Years 2002—2004, Initial Decision and Order, February 17, 2005).

The material facts of the instant case are undisputed. Visteon, a Michigan-based corporation, is an automotive parts supplier that was formerly a division of the Ford Motor Company. The property in question is used (or held for use) in Visteon's Nashville Glass Plant ("NGP"), located at 7200 Centennial Boulevard. NGP has been in operation since the mid-1950s.

In tax year 2000, the Assessor valued the tangible personal property in NGP at $108,635,299. Visteon subsequently commissioned an independent appraisal of the machinery and equipment in the plant. According to the summary appraisal report of Arthur Andersen LLP, which was formally transmitted to Visteon on March 9, 2001, the fair market value of such property on December 31, 2000 was $0. Exhibit 2.

The preparer of Visteon's 2001 tangible personal property schedule reported no items on the "nonstandard value" portion of the form (Part IV); however, in lieu of the "cost on file" figures printed under groups 1, 2, 3, 5, and 10 in Part II, he entered drastically reduced amounts without written explanation. Exhibit 7. On or about May 24, 2001, Visteon submitted a copy of the Arthur Andersen summary appraisal report to the Assessor's office. Exhibit 1. Ultimately, the personal property at the NGP was valued for tax year 2001 on the basis of Visteon's "revised cost" figures (less depreciation). The total appraisal was $12,940,625 – approximately 88% less than the 2000 value. Exhibit 8.

Visteon reported a similar value in tax year 2002, utilizing the new revised cost figures printed on the schedule. Exhibit 5. The Assessor accepted the return as filed. Likewise, in tax year 2003, the equalized value originally certified by the Assessor ($8,799,423) was predicated on Visteon's "revised cost" entries. Exhibit 6. In neither 2002 nor 2003 did the taxpayer specifically claim a nonstandard value.

On March 12, 2003, the Assessor notified Visteon that the subject account would be audited by Tax Management Associates (TMA), a firm under contract with the local governing body pursuant to Tenn. Code Ann. section 67-5-507. Exhibit A. Upon the Assessor's request, Visteon furnished a complete list of the assets reported on its 2003 tangible personal property schedule, including the dates and costs of acquisition. Visteon's cover letter of April 17, 2003 informed the Assessor's office that:

> Personal property reported on Tax Schedule B has been reported at 5 percent of acquisition cost. Assets were subject to a write-down of cost in accordance with Generally Accepted Accounting Principles due to an impairment of value supported by an independent appraisal.[2]

Exhibit 1.

Based largely on the discovery of the underreported actual cost, TMA's auditors concluded that there were "additional appraisal variances" in tax years 2002 and 2003 of $82,938,962 and $72,842,829, respectively. Deputy Assessor Janice Nicholas notified Visteon of the audit findings in a letter dated April 19, 2004. Her letter continued (in relevant part) as follows:

> Accordingly, we **make** the following back assessments in accordance with Tennessee Code Annotated 67-1-1007....If we do not receive written exception thereto within thirty (30) days from the date of this letter, we will **begin** back assessment procedures. [Emphasis added.]

Exhibit B.

Citing, *inter alia*, the Arthur Andersen appraisal of the subject property, Visteon requested "reconsideration" of the so-called back assessments by certified mail on May 11, 2004. Visteon Tax Counsel and Manager Cindy James declared in her letter that:

> The Taxpayer has worked with the Assessor's Representative during his audit of the Taxpayer's Nashville, Tennessee facility and respectfully requests that this working relationship continue with the goal of resolving the outstanding issues. The (Deputy Assessor's) Letter appears to indicate that a field inspection may resolve many of the issues. The Taxpayer continues to offer the plant tour and requests potential dates for such inspection. The Taxpayer is also available to discuss and provide any additional documentation that your representative may require to eliminated [sic] the back assessments.

Exhibit 3.

Alas, despite a pre-arranged field inspection of the NGP by representatives of the Assessor's office and TMA on August 10, 2004, the parties were unable to resolve their differences. Exhibit 4. So on October 26, 2004, the Assessor certified back assessments/reassessments of the subject property for tax years 2002 and 2003 in the

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[2]Presumably, the "independent appraisal" referred to in this letter was the previously submitted report by Arthur Andersen LLP.

amounts shown above to the Metropolitan Trustee, sending copies of the certifications to Visteon. Exhibits C and D. These appeals to the State Board ensued.

Contentions of the Parties. Counsel for Visteon contended that neither of the back assessments/reassessments under appeal was properly made within the time allowed under Tenn. Code Ann. section 67-1-1005.

In Ms. Darby's view, the taxpayer had made "knowing" misrepresentations of its actual (original) costs on the 2002 and 2003 schedules. Therefore, she maintained, the back assessment/reassessment deadline was under Tenn. Code Ann. section 67-1-1005 was extended to *three* years from September 1 of the tax years in controversy (plus the tolling period for the duration of the audit). Alternatively, she argued that (a) the Deputy Assessor's letter of April 19, 2004 constituted adequate notice of the back assessments/reassessments; and/or (b) Ms. James' letter of May 11, 2004 extended the tolling period until the breakdown of the settlement negotiations.

Criteria for Ruling. The proponent of a motion for summary judgment must establish that: (1) there is no genuine issue as to any material fact; and (2) it is entitled to judgment as a matter of law. Tenn. R. Civ.P. 56.

Analysis. State Board Rule 0600-5-.06(1) establishes a presumption that the market value of commercial and industrial tangible personal property (other than raw materials, supplies, scrap, construction in progress, and pollution control equipment) is "the original cost to the taxpayer less straight line depreciation, or the residual value, whichever is greater." This presumption is rebuttable (by either the taxpayer or the assessor) upon the presentation of sufficient evidence to support a "non-standard" valuation. State Board Rule 0600-5-.07.

In E. I. DuPont de Nemours & Co. (Hamilton County, Tax Year 2004, Initial Decision and Order, March 18, 2005), the taxpayer claimed on an amended personal property schedule that its original costs for the items in question were 18% below the amounts previously reported. This claim was based on a write-down of those assets in anticipation of the sale thereof at a price markedly below the values shown on the company's financial statements. In upholding the assessor's rejection of the amended return, the administrative judge observed that "[t]he write-down…represented an adjustment to the *book value* of these assets (i.e., acquisition cost less accumulated depreciation) – not their original cost." *Id.* at p. 3.

Likewise, in the instant case, the original *cost* of the assets reported on Visteon's 2001 tangible personal property schedule was in no way altered by the fee appraiser's estimate of their market *value*. After all, whereas an appraisal merely represents an opinion of value, the taxpayer's *original cost* – at least for ad valorem tax purposes – is an historical fact. Thus the

administrative judge agrees with Ms. Darby that Visteon "was attempting to assert a non-standard value" which should have been requested elsewhere on Tax Schedule "B". Metropolitan Government's Response to Motion for Summary Judgment, p. 3.

Yet surely the receipt of a summary appraisal report on the subject property effectively put the Assessor's office on notice as to the basis for the values claimed by the taxpayer on its 2002 and 2003 renditions. Indeed, there is no other plausible explanation for the Assessor's acceptance of Visteon's sharply lower "revised cost" figures in tax year 2001.[3] Exhibit B, p. 1. Having furnished ostensibly competent evidence from a disinterested source tending to show that the market value of the subject property as of December 31, 2000 was $0, the taxpayer was hardly guilty of "actual fraud" or "fraudulent misrepresentation" within the meaning of Tenn. Code Ann. section 67-1-1005(a) in reporting multi-million dollar values thereafter. Hence application of the extraordinary three-year back assessment/reassessment deadline would be inappropriate here.

Further, despite the implication in the April 19, 2004 notice of audit findings, the Assessor did not thereby "make" back assessments of the subject property. Tenn. Code Ann. section 67-1-1005(b) provides (in relevant part) that:

> A back assessment or reassessment may be initiated by certification of the assessor of property to the appropriate collecting officials identifying the property and stating the basis of the back assessment or reassessment and the tax years and amount of any additional assessment for which the owner or taxpayer is responsible. The assessor shall send a copy of the certification to the owner or taxpayer. The collecting official shall thereupon send a notice of taxes due based on the back assessment and reassessment....

The Assessment Appeals Commission has held, albeit under a prior law whereby back assessments or reassessments were initiated by filing a sworn complaint with the assessor's office, that "the complaint procedure must be strictly followed to assure the validity of the back assessment." Lemm Services, Inc. (Shelby County, Tax Year 1996, Final Decision and Order, April 19, 2000), p. 2. Strict compliance with the current back assessment/reassessment procedures set forth in Tenn. Code Ann. section 67-1-1005 is no less essential. The aforementioned subsection (d) of that section clearly recognizes a distinction between a notice of audit findings and a certification of back assessment/reassessment. Treatment of the notice of audit findings as the equivalent of a back assessment/reassessment would obliterate that distinction and render the notification of "any additional assessment for which the owner or taxpayer is responsible" under Tenn. Code Ann. section 67-1-1005(b) superfluous. That Ms. James' letter of May 11, 2004 referred to the "back assessments" as if they were a *fait accompli* is of no legal significance.

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[3]The appraiser's estimate of the replacement cost new (RCN) of the subject property, which was derived largely from indexing of historical cost data, was $265,000,000.

Finally, the administrative judge cannot assent to the notion that Ms. James' letter somehow revived the tolling period which had already expired under the express terms of the law upon the issuance of the audit findings. There is nothing remarkable in the fact that the parties continued to meet and discuss the possibility of a settlement after the audit findings were issued. On the contrary, as was observed in Pittco, Inc., *supra*:

> It is understood that the Assessor, acting in good faith, might later have agreed to change those findings upon receipt of sufficient justification. But section 67-1-1005(d) was surely not intended to give the Assessor an indefinite period within which to ponder audit findings and decide whether to initiate a back assessment or reassessment.

Id. at p. 4. *See also* Alcoa Inc. (Blount County, Tax Years 2001—2003, Initial Decision and Order, February 17, 2006), p. 4.[4]

As extended by the tolling period from March 12, 2003 until April 19, 2004, then, the applicable deadlines for initiating back assessments/reassessments of the subject property for tax years 2002 and 2003 (by certification to the Metropolitan Trustee) were not later than October 10, 2004 and October 10, 2005 respectively. It follows that Visteon's motion for summary judgment must be granted.

Order

It is, therefore, ORDERED that the following values be adopted for the tax years under appeal:

TAX YEAR	APPRAISAL	ASSESSMENT
2002	$10,909,673	$3,272,902
2003	$8,799,423	$2,639,827

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

[4]Both parties took exception to the initial order in the Alcoa case, which is still pending before the Assessment Appeals Commission.

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 8th day of May, 2007.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: David C. Scruggs, Attorney, Evans & Petree, PC
Metropolitan Attorney Margaret O. Darby
Jo Ann North, Davidson County Assessor of Property

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